

REMARKS

Applicants wish to elect Group I, without traverse for further prosecution.

Additionally, applicants believe that the arrangement of the specification now conforms to the examiner's requirements. No new matter has been introduced into the specification

The examiner has rejected claims 1-11 and 13-17 under 35 USC §103(a) as unpatentable over Meir et al. (US 5,830,552). The examiner argues that it would be obvious to one of ordinary skill in the art to include a dispenser box, a condensation box or an apparatus for a water duct as a functional element since the product is intended mainly as a cover plate for kitchen appliances. Also, the examiner argues that claims 14-17 are obvious in light of the Meir patent because Meir is intended for use as a household device cover plate for a dishwasher or refrigerator.

Three requirements must be fulfilled in order for a *prima facie* case of obviousness to be satisfied. First, there must be some suggestion or motivation in the references themselves or available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references combined must teach or suggest all the claim limitations. MPEP §2143. Both the suggestion to carry out the claimed process and the reasonable expectation of success must be found in the prior art and not based on the applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). Additionally, the level of ordinary skill in the art cannot be relied

upon to provide the suggestion to combine references. *AI-Site Corp. v. VSI Int'l Inc.* 174 F.3d 1308, 50 USPQ2d 1161, 1171 (Fed. Cir. 1999). With respect to the instant invention, applicants are convinced that the examiner has failed to meet this burden.

The examiners' remarks, as outlined above, incorporate a hindsight view of the prior art that encompasses the applicants' disclosure. The examiner suggests that because a general use for a cover plate is disclosed in Meir, it would be obvious for one of ordinary skill in the art to incorporate the functional elements of applicants invention. There are three possible sources for motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-1458 (Fed. Cir. 1988). In this instance the examiner has failed to identify any of these sources as providing a motivation to combine the reference with the knowledge of one of ordinary skill in the art.

In support of this argument the examiner cites Column 4, lines 54-59 which describes the leg of the inner frame or the injection molded on strip has the necessary sections for fixing the plate to the kitchen appliance casing. Indeed the embodiment according to Fig. 7, discloses a "lattice-like structure can be used for the construction of fixing means, by means of which the plate is fixed to a kitchen furniture item, e.g. a refrigerator or dishwasher casing. The two frames 6,7, which can once again be produced separately by injection molding are interconnected by welding at their legs 9 and 27." Column 7, lines 19-24. This disclosure describes a function that is merely

incidental to the structure of the frame.

In contrast, the instant invention discloses a reinforcer which has the structure of a sheet, box or crate which integrates molded-on functional elements pertaining to dispenser boxes, condensation boxes, apparatuses for an integrated means of conveying water, or retaining elements for valves or elements to fasten the cover plate to the device or fastening cables or tubing which is integrated into the reinforcer or the upper part of a functional element is integrated into the reinforcer. Thus, the general disclosure of a frame for attachment would not suggest to one of ordinary skill in the art to produce the reinforcer with integrated molded-on functional elements of the instant invention. Nor would it suggest to one of ordinary skill in the art a molded-on functional element that is used for attachment. As a result, the examiner has failed to establish a motivation to modify the Meir reference to that of the instant invention.

One of ordinary skill in the art would not have a reasonable expectation of success of producing the instant invention in light of the disclosure of Meir. Meir requires a wooden core plate which may have a top surface of glass, plastic or metal. In contrast, the instant invention is composed of (1) a decorative part and (2) a reinforcer having the structure of a sheet or box or crate. The decorative part is comprised of a decorative layer applied on a support. The support and the reinforcer are composed of a thermoplastic polymer. The examiner points out that the Meir disclosure says that the core plate may be made from glass, plastic or metal. (See p. 5 of office action dated February 14, 2002). However, Meir discloses eleven

embodiments of their invention with a core plate made from a wooden material which is covered with a moistureproof top or cover coating. Column 5, lines 40-45. Indeed, none of the examples disclosed in Meir disclose a core plate made of plastic, glass or metal. Thus, one of ordinary skill in the art would not have a reasonable expectation of success in light of the Meir reference.

Additionally, the reference does not teach or suggest all the limitations of the rejected claims. Claim 1, from which claims 2-11 depend, contains the element of molded-on functional elements where the reinforcer has the structure of a sheet or box or crate and has a closed lower side. The examiner argues that while the reference does not specifically mention molded-on functional elements, Meir discloses that the leg of the frame has the necessary section or profiles for fixing the plate to the kitchen appliance casing. However, as discussed above, mere attachment of the cover to a casing does not suggest functional elements for the operation of a kitchen appliance.

Additionally, the MPEP cites some basic considerations which apply to obviousness rejections: the claimed invention must be considered as a whole, the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination, the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention and reasonable expectation of success is the standard with which obviousness is determined. MPEP §2141, citing *Hodosh v. Block Drug Co., Inc.* 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986).

Alternatively, even if a *prima facie* case of obviousness has been met, the examiner has failed to consider the reference as a whole. A reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, cert. Denied, 469 U.S. 851 (1984). Meir specifically discloses that the aim of their invention is to provide a cover or table plate, which is inexpensive to manufacture, is functionally correct and allows simple separation of the edge protection and core plate. Column 2, lines 1-5. Indeed, Meir discloses that a problem in the field is separation of the edge protection once the protected item becomes valueless. In contrast, the instant invention provides a cover plate with high strength and stability that as a whole is recyclable. (Page 1, lines 26-29). The present invention provides a strong and intimate connection between the decorative part and the reinforcer by heat treatment. As a result, the invention provides better moisture resistance, since the whole device is of thermoplastic polymer instead of wooden material. Thus, one would not have to separate the protective cover before disposal of the item, but could recycle the entire cover plate as it is one item. Accordingly, it would not be obvious to one of ordinary skill in the art to make the present invention in light of the Meir reference. Applicants respectfully request that the rejection be withdrawn and the instant application be passed to issue.

A check in the amount of \$110.00 is attached to cover the required one month extension of time fee.

Please charge any shortage in fees due in connection with the filing of this

KLEMM et al., Serial No. 09/640,092

paper, including Extension of Time fees to Deposit Account No. 11-0345. Please credit any excess fees to such deposit account.

Respectfully submitted,

KEIL & WEINKAUF



Lesley E. Shaw
Reg. No. P52,514

1350 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 659-0100
7847

LES/kas